APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,424	04/10/2006	Yang Peng	CN 030035	3752

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EXAMINER
POPHAM, JEFFREY D

ART UNIT	PAPER NUMBER
2437	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	10/575,424	PENG ET AL.
	Examiner	Art Unit
	JEFFREY D. POPHAM	2437

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>11 May 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: *See Continuation Sheet.* (See 37 CFR 1.116 and 41.33(a).)

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Emmanuel L. Moise/ Supervisory Patent Examiner, Art Unit 2437	/Jeffrey D Popham/ Examiner, Art Unit 2437

Continuation of 3. NOTE: The amendment to claim 17 wishes to change the claim to "An optical disk playing system for playing an optical disk comprising digital information stored thereon, the stored digital information comprising:…" As one can see, this is a system for playing a disk, the disk comprising information, and the body of the claim is directed to the information stored on the disk. Adding "optical disk playing system for playing an" before "optical disk" does not make the claim statutory. If this amendment were to be entered, this claim would be directed merely to "An optical disk playing system", as the rest of the claim is not directed to such a system, but rather intended use of the system, as the optical disk playing system is "for playing an optical disk" and the rest of the claim is directed to information stored on the disk. This issue is also found in claim 32. The other amendments only amend claims 18 and 19, dependent from claim 17, to refer back to "The optical disk playing system" instead of "The optical disk". These claim amendments will not be entered as they do not put the claims in better form for appeal, and may raise further issues.

Continuation of 11. does NOT place the application in condition for allowance because: With respect to the 112, first paragraph, rejection, Applicant refers to the application to show downloading "contents from the web server 4 during playing, so as to cooperate with the existing content on the optical disc 2 to play the optical disc 2." This certainly shows playing the optical disc, and downloading contents to play in cooperation with the disc. The 112, first paragraph, rejection, however, is directed to the limitation of playing the downloadable content in coordination with the associated stored media content. There is a major difference between playing the disk (or content thereon) and playing downloadable content, and this different was noted in the final office action, and not argued.

Applicant then argues that those skilled in the art use the terms "playing" and "executing" interchangeably. Applicant goes on to state that "It is well known that application programs are used to play back musical or video content of optical medium, e.g., DVD." This is quite correct, application programs can be used to play back music and video. However, this is not playing the application, this is playing the music and video. Reference to "playing" with respect to applications is indefinite, as it does not define the scope of the claims. One of ordinary skill in the art would not equate "play" and "execute", where an application may be "played".

Applicant argues that asymmetric cryptography is well known. However, the rejection was not based on asymmetric cryptography being indefinite. Upon reading the rejection, one will note that the issue lies in how use of the keys is claimed, as it makes no sense. Applicant provides no argument, however, with respect to the final paragraph of page 4, other than this, and to state that "claim 20 recites "a network interface" that is used to download content that includes the key to be paired with the key stored on the optical disk. Claim 20 doesn't recite such pairing or downloading of a key to be paired with a key stored on the disk, however, merely reciting verifying authenticity of downloaded content using a public key from the disk. As Applicant has not provided any arguments with respect to the actual rejection, no more response is deemed necessary.

Applicant argues that "not operating" corresponds to "not functioning" and "not playing". However, as noted in the rejection, if Applicant intended for the claims to reference playing or not playing, it would have been claimed this way. Operating or not operating is much different from playing or not playing. This is noted by independent claim 25, for example, reciting verifying the authenticity of downloaded content "before allowing the downloaded content to be played". Claim 27 goes on to add that "the downloaded content will not operate if the downloaded content is not authenticated." Since claim 25 uses the term "played" and claim 27 uses the term "operate", it is quite clear that these are different, as, if claims 25 and 27 were intended to refer to playing content upon authentication and not playing content if the content is not authenticated, both would refer to playing or not playing. This is much like the above, where Applicant argued use of "playing" and "executing" meant the same thing. Claims 27 and 28 are indefinite as adding terminology such as "will not operate" (and "will operate" with respect to content that is to be played (not "operated") does not clearly define the scope of the claims.

Applicant argues that "Uranaka shows verifying the server, not whether the applications downloaded from the server were compromised as explained for example at page 4, lines 3-11 of Uranaka". It appears as though Applicant intended to refer to page 4, lines 3-11, of the instant application's specification as opposed to Uranaka, as Uranaka is a patent with columns and not pages. The teachings of page 4, lines 3-11 of the specification, however, don't appear in the claims.

In response to Applicant's argument that Uranaka shows verifying that the server is authentic, this is entirely correct, and is done within Uranaka, as Applicant has noted. However, the rest of this argument is unclear. None of the independent claims appear to refer to applications that are downloaded from a server or verifying whether such applications were compromised. The claim limitation being argued here is "verify the authenticity of the downloadable content". This limitation will be discussed, as the claim does not include page 4, lines 3-11.

One of ordinary skill in the art will readily realize that verification of the signature results in both authentication of the server and the data. The server signs the data (in the case of column 15, lines 57-67, the AP-encrypting key) with the servers secret key. The client/player then tests the signature by decrypting such signature with the server's public key. Applicant admits that the server is authenticated in this section of Uranaka. Since the server is authenticated, the result of testing of the signature must provide the proper information in order to show that the server did, indeed, sign the data with the server's private key. If the client decrypted the data with the server public key and got a garbled mess, neither the server nor the data would be authentic, since the authentication of each go hand in hand when using signatures such as this. That is to say, if the client determined the server not to be authentic, the client would do so by determining that the data is not authentic. The only way for the server to be authentic is for the data that was signed by the server to be authentic in the signature process of Uranaka, column 15, lines 57-67. If the data is incorrect (not authentic), the server is also not authenticated. The only way for the server to be authentic is for the data to be authentic. Therefore, Uranaka clearly teaches verifying the authenticity of the downloadable content.